IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEPT PETITION NO. 92 OF 2006

Shri Bhawanji Meghji Gala .. Petitioner.

V/s.

1(a) Mr.Jayesh T. Shah & Others .. Respondents.

Mr. J.M.D'Silva for the Petitioner.

Mr.Anuj Narula for the Respondent Nos.1(a) to 1(b).

CORAM : S. A. BOBDE, J.

DATED : 10th SEPTEMBER, 2007.

P.C. :-

. The petitioner has moved this court for alleged breach of the consent terms by the respondents-contemnors. The clause which is said to be breached reads as follows :

> b) In consideration of the above, the Defendant No.1 shall be entitled to deal with and dispose of 24 Flats corresponding to 18500 sq.ft. mentioned in Supplementary Modification Agreement and which are same as mentioned in Exhibit 'A' hereto. However, pending the settlement of the said claims of all the flat

purchasers as mentioned in Annexure-III to the Development Agreement and Annexure -I to the Supplementary Modification Agreement, the Defendant No.1 shall be entitled to deal with or create any third party rights in respect of the Flats which are settled out of the said 24 flats. Provided further in the event Defendant No.1 chooses to deal with the other flats pending the settlement of the claims as mentioned above, in such event the plaintiff shall stand absolved of all his liability in respect of the said flat/s which are dealt with or dispose off by the Defendant No.1 and the defendant No.1 alone shall be liable to settle the claims of all the flat purchasers of such Flats.

2. According to the learned counsel for the petitioner, the contemnors are not dealing with the 24 flats which they were supposed to deal. As a result of which the persons concern are giving threats of legal proceedings against the petitioner. It appears that under the consent terms the builder had taken the responsibility of the flats scheme from the petitioner and had agreed to deal with the 24 flats.

3. Shri Narulla, the learned counsel for the respondents points out that the clause in question is self operative and under the consent terms there is a clause which provides for the consequences, if the contemnor does not deal with the flats in question. That consequence is that the petitioner shall stand absolved of all his liability in respect of the said flat/s and the responsibility to settle the claim will be of the contemnors alone. In any case, it appears that the time during which the respondents were supposed to deal with the flats was upto November, 2004 but the clause also provides that the period for the said purpose may be anything that may be mutually agreed between the parties. In the circumstances, it is not possible to come to the conclusion that there is a wilful breach of the consent terms by the respondents.

4. The other contention on behalf of the petitioner is that there is a breach of clause 6 of the consent terms which reads as follows :

> "6. Agreed and undertaken by the Defendant No.1 that Flat Nos.B-1 and B-2, on the ground floor of the said building Shanta Apartment shall be reconstructed and completed within 90

days from the execution of the consent Terms to the satisfaction of the owners of Flat Nos. B-1 and B-2 viz. Ms. Varsha Malde and Jayesh B. Shah respectively and indemnify the Plaintiff from all costs, charges, suit, proceedings or claims in respect of the same."

5. Mr.Narulla, the learned counsel for the respondents states that these two flats i.e. Flat Nos.B-1 and B-2 are covered by clause 'b' reproduced earlier and in any case the petitioner cannot raise any grievance against the said flats since the contemnor had made a settlement in respect of the said and that the petitioner has himself received certain sums from the contemnor against the said flats under the agreement. There seems to be some dispute on this count. In any case, there does not appear to be any wilful breach or disobedience of the consent terms. Notice for contempt is hereby discharged.

6. In the result the contempt petition is dismissed.

(S.A.BOBDE,J.)

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